

Message Text

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ACTION EB-11

INFO OCT-01 DRC-01 NSC-07 IO-14 ISO-00 FRB-03 OMB-01

TAR-02 SP-03 SWF-02 AGR-20 AID-20 CIAE-00 COME-00

INR-11 LAB-06 NSAE-00 OIC-04 RSC-01 SIL-01 STR-08

TRSE-00 CIEP-03 CEA-02 AF-10 ARA-16 EA-11 EUR-25

NEA-14 OPIC-12 XMB-07 H-03 SS-20 PA-04 PRS-01 USIA-15

L-03 /262 W
----- 073501

P R 091340Z SEP 74
FM USMISSION GENEVA
TO SECSTATE WASHDC PRIORITY 8119
INFO AMEMBASSY MEXICO
USMISSION USUN NY
USMISSION OECD PARIS
TREASURY DEPT WASHDC

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TREASURY PASS BRADFIELD

E.O. 11652: N/A
TAGS: EGEN, UNCTAD, OECD
SUBJECT: UNCTAD TDB XIV: OECD CONSULTATIONS ON CHARTER OF
ECONOMIC RIGHTS AND DUTIES

REF: GENEVA 4654

1. SALTER (EC) AND BLACK (OECD) HAVE AT CURRENT SESSIONS
OF CONTACT GROUP NOTED IMPORTANCE THEIR ORGANIZATIONS
ATTACHED TO CONSULTATIONS NEXT WEEK AT OECD ON ECONOMIC
ISSUES TO COME BEFORE UNGA, INCLUDING CHARTER OF
ECONOMIC RIGHTS AND DUTIES. FOLLOWING COMMENT OF USDEL ON
CHARTER MAY BE OF USE TO USREF AT THOSE CONSULTATIONS.
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2. NARROWING OF DIVERGENCES ACCOMPLISHED AT CONTACT
GROUP SESSION WAS SLIGHT. WHILE BRILLANTES FORMULA,
AT INSISTENCE OF GROUP B, WAS TAKEN AS BASIS OF DISCUSSION ON
NATIONALIZATION ISSUES, RESULT WAS TO DEMONSTRATE
THAT GROUP OF 77 IS UNWILLING TO ACCEPT THE PRINCIPAL
POINTS OF THAT FORMULA THAT MAKE IT ATTRACTIVE TO GROUP B,
I.E., RESPECT FOR INVESTMENT AGREEMENTS AND JUST
COMPENSATION FOR NATIONALIZED PROPERTY. THEY ARE WILLING
TO ACCEPT THE CONCESSIONS THE FORMULA AFFORDS TO GROUP
OF 77 VIEWPOINTS ON REGULATION OF FOREIGN INVESTMENT
AND MNC'S WITHOUT COMPENSATORY CONCESSIONS. ACCORDINGLY,
THE OUTLOOK FOR AGREEMENT AT THE FURTHER ROUND OF
INFORMAL CONSULTATIONS THAT WILL TAKE PLACE BEFORE UNGA
SECOND COMMITTEE TAKES UP THE CHARTER IS POOR. DIM OUT-
LOOK ACCENTUATED BY REFUSAL OF GROUP OF 77 TO GO ALONG
WITH MEXICAN PROPOSAL TO DETACH RELATIVELY UNDEBATED
AND CONTENTIOUS SUBJECTS FROM CHARTER.

3. ANY POSSIBILITY THERE MAY BE OF THE GROUP OF 77
MODIFYING ITS VIEWS, ACCEPTING THE ESSENTIALS OF THE
BRILLANTES FORMULA, AND OTHERWISE AGREEING TO DROP FROM
THE CHARTER RELATIVELY UNDEBATED PROPOSALS GROUP B CANNOT
ACCEPT, SUCH AS ENDORSEMENT OF PRODUCERS CARTELS,
INDEXATION, AND FULL COMPENSATION FOR RAVAGES OF COLONIAL-
ISM, OCCUPATION, APARTHEID, ETC., LIES IN CONVINCING IT
THAT, IF IT DOES NOT DO SO AND PRESSES CHARTER TO A VOTE,
LEADING GROUP B MEMBERS WILL VOTE AGAINST THE CHARTER.
IF GROUP OF 77 CONCLUDES THAT, IN A VOTING CRUNCH,
GROUP B WILL ACT AS IT ACTED AT SIXTH SPECIAL SESSION,
OR EVEN ABSTAIN, IT IS THE LIKELIER TO REMAIN INTRANSI-
GENT. BUT IF IT GATHERS IMPRESSION THAT THE USG AND A
FEW OTHERS, LIKE FRG, FRANCE, AND HOPEFULLY UK AND JAPAN,
WILL ACTUALLY VOTE AGAINST, THERE IS SOME CHANCE THAT AN
ACCEPTABLE CHARTER CAN STILL BE NEGOTIATED.

4. ON MERITS OF CASE, IF THE CHARTER IS PUSHED TO A
VOTE WITH DIFFERENCES ESSENTIALLY UNRESOLVED, IT IS
BELIEVED THAT USG INTERESTS REQUIRE A NEGATIVE VOTE. A
NEGATIVE VOTE WOULD HAVE FOLLOWING ADVANTAGES. IT WOULD
WEAKEN THE INTERNATIONAL FORCE OF PROPOSITIONS THAT RUN
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COUNTER TO USG INTERESTS. IT WOULD ENABLE USG TO REBUT
CITATIONS OF CHARTER AGAINST ITS INTERESTS AS BEING
CITATIONS OF A CONTESTED RECOMMENDATION OF UNGA, OF NO
VALUE AS AN ACCURATE RENDERING OF THE PRINCIPLES WHICH
STATES HAVE ACCEPTED AS GOVERNING THEIR INTERNATIONAL
ECONOMIC RELATIONS. IT WOULD BLOCK RELIANCE UPON THE
CHARTER AS AN INSTRUMENT THAT IS WITHER DECLARATORY OF
INTERNATIONAL LAW OR A SOURCE OF IT. IT WOULD NOT

EMBARRASS THE USG -- AS DO THE RESOLUTIONS OF THE SIXTH SPECIAL SESSION -- WHEN IT PURSURES POLICIES CONTRARY TO THE CHARTER. IT WOULD TEND RELATIVELY TO EASE PRESSURES ON USG TO JOIN IN RESOLUTIONS AND MEASURES IMPLEMENTING THE CHARTER, WHICH WOULD BE A WELCOME CONTRAST TO THE CONSTANT PRESSURE THAT IS EXERTED FOR IMPLEMENTATION OF RESOLUTIONS OF SIXTH SPECIAL SESSION. TO THE EXTENT THAT THE CHARTER COVERS ISSUES COVERED BY RESULUTIONS OF SIXTH SPECIAL SESSION, A NEGATIVE VOTE WOULD GO SOME WAY TOWARDS RECONVERING GROUND LOST BY UNANIMOUS ADOPTION OF THOSE RESOLUTIONS. IT WOULD PLACE THE GROUP OF 77 ON NOTICE THAT, ON ECONOMIC ISSUES, THE USG HAS THE COURAGE OF ITS CONVICTIONS AND THAT THERE ARE LIMITS BEYOND WHICH IT CANNOT BE PUSHED. IT WOULD ENHANCE THE CREDIBILITY OF USG, WHICH WAS TARNISHED BY ITS PARTICIPATION IN ADOPTING RESOLUTIONS OF SIXTH SPECIAL SESSION WITHOUT OBJECTION AFTER IT HAD STRONGLY MAINTAINED THAT IT COULD NOT POSSIBLY ACCEPT CERTAIN PROVISIONS OF THOSE RESOLUTIONS, SUCH AS THOSE BEARING ON NATIONALIZATION. IT WOULD UPHOLD THE STATEMENT BY SECRETARY OF STATE TO UNGA THAT USG WILL ONLY SUPPORT A BALANCED CHARTER THAT TAKES ACCOUNT OF THE INTERESTS OF DEVELOPED AS WELL AS LDC'S. A NEGATIVE VOTE WOULD PLEASE MANY CONCERNED INTERESTS IN PRIVATE SECTOR, SUCH AS AMERICAN BAR ASSOCIATION, WHOSE HOUSE OF DELEGATES HAS UNANIMOUSLY CALLED ON USG NOT TO SUPPORT A CHARTER THAT IS NOT SUBJECTED TO OBLIGATIONS OF INTERNATIONAL LAW.

5. DISADVANTAGES OF ANEGATIVE VOTE ARE THAT IT WOULD PAIN MEXICAN PRESIDENT AND FONOFF AND DISPLEASE GROUP OF 77; PROBABLY PLACE THE USG IN RELATIVELY ISOLATED POSITION OF OPPOSING A CHARTER WHICH THE GREAT BULK OF UN MEMBERSHIP SUPPORT; AND LEND APPARENT SUPPORT TO THE LIMITED OFFICIAL USE

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CHARGE THAT USG OPPOSES PROGRESSIVE PRINCIPLES OF INTERNATIONAL LAW AND INTERNATIONAL ECONOMIC RELATIONS WHICH CONDUCE TO WELLBEING OF THE WORLD'S UNDERPRIVILEGED.

6. IN USDEL'S VIEW, THESE DISADVANTAGES ARE MORE APPARENT THAT REAL, AND IN ANY EVENT ARE MUCH OUTWEIGHED BY ADVANTAGES OF A NEGATIVE VOTE. MANY ELEMENTS OF CHARTER AS GROUP OF 77 PROPOSE IT ARE IN FACT REGRESSIVE RATHER THAN PROGRESSIVE. SOME OF THEM, SUCH AS UNBRIDLED EXPROPRIATION AND PRODUCERS CARTELS, WOULD PREJUDICE RATHER THAN PROMOTE THE WORLD ECONOMY. MOREOVER, EVEN IF USG WERE EITHER TO ABSTAIN OR VOTE FOR WITH RESERVATIONS IN FASHION AKIN TO THAT OF SIXTH SPECIAL SESSION, PRESUMABLY IT COULD ONLY DO SO WITH FAR-REACHING RESERVATIONS. THOSE RESERVATIONS WOULD DISPLEASE MEXICO....

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ACTION EB-11

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NEA-14 OPIC-12 XMB-07 H-03 SS-20 PA-04 PRS-01 USIA-15

L-03 /262 W

----- 073764

P R 091340Z SEP 74

FM USMISSION GENEVA

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AND UNALIGNED ONLY SOMEWHAT LESS THAN A NEGATIVE VOTE,
AS AMB HOVEYDA'S REMARKS IMMEDIATELY FOLLOWING
UPON STATEMENT OF AMB SCALI'S RESERVATIONS AT
SIXTH SPECIAL SESSION SUGGEST. SUCH A COURSE WINS FOR
USG ONLY THE MOST EXIGUOUS AND EVANESCENT GOODWILL. IF USG
PROCEEDED TO ACT IN CONFLICT WITH CHARTER IT HAD NOT
VOTED AGAINST AND TO RESTATE ITS RESERVATIONS, AS IT WOULD, IT
WOULD INCUR THE SAME LDC ANTAGONISM IT NOW REAPS IN RESPECT
OF THE RESOLUTIONS OF SIXTH SPECIAL SESSION. MORE
IMPORTANT, EVEN AN ABSTENTION, (STILL MORE A POSITIVE VOTE)
-WITH THE RESULT OF THE CHARTER BEING ADOPTED BY CIRCA
125 TO ZERO WITH ABOUT TEN ABSTENTIONS -- WILL PERMIT
THE GROUP OF 77 TO CITE THE CHARTER AS SETTING FORTH
UNOPPOSED, IF NOT BINDING, PRINCIPLES OF INTERNATIONAL
ECONOMIC RELATIONS, INDEED OF INTERNATIONAL LAW. HISTORY

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OF UN DEMONSTRATES THAT WHERE THE WEST LACKED THE COURAGE
OF ITS CONVICTIONS AND FAILED TO VOTE NEGATIVELY ON UN
DECLARATIONS BUT CONTENTED ITSELF WITH ABSTENTION OR
POSITIVE VOTE COUPLED WITH A STATEMENT OF RESERVATIONS,
SUCH DECLARATIONS HAVE COME TO BE ACCEPTED AS AUTHORITATIVE,
E.G., DECLARATIONS ON COLONIALISM AND NON-INTERVENTION.
FACT OF ABSTENTION IS TREATED AS EQUIVALENT TO ABSENCE
OF PROTEST; RESERVATIONS ATTACHED TO A POSITIVE VOTE
TEND TO DISAPPEAR. IF CURRENT STRENuous EFFORTS OF
USG TO MAINTAIN ITS RESERVATIONS TO RESOLUTIONS OF SIXTH SPECIAL
SESSION SUCCEED OVER PERIOD OF YEARS, IT WILL BE
REMARKABLE AND EXCEPTIONAL. SIMILAR CONSIDERATIONS
APPLY TO A NEGATIVE VOTE ON OFFENSIVE PARAGRAPHS
COUPLED EITHER WITH AN ABSTENTION OR WITH A POSITIVE
VOTE ON THE WHOLE RESOLUTION.

7. IT MUST BE ASSUMED THAT, DESPITE COGENCY OF CASE
FOR A NEGATIVE USG VOTE, MECICO WILL INTENSIVELY PRESS
USG AT HIGHEST LEVELS TO VOTE POSITIVELY WITH RESER-
VATIONS A LA SIXTH SPECIAL SESSION, OR AT
LEAST TO ABSTAIN. EVERYTING WILL BE SAID
OF HOW IMPORTANT A POSITIVE OR AT LEAST NOT NEGATIVE
USG STAND WILL BE TO MEXICO, TO PRESIDENT ECHEVERRIA,
FONSEC RABASA, USG-MIXICAN RELATIONS, USG IMAGE, ETC.
NOTHING WILL BE SAID OF FACT THAT GROUP OF 77, OFTEN
APPARENTLY LED BY MEXIOC, HAS INSISTED ON MAINTAINING
THE IMPOSSIBLE POSITIONS LAID DOWN BY GROUP OF 77
EXTREMISTS, SUCH AS INDIA, ALGERIA, AND YUGOSLOVIA; THAT
MESICO, WHILE ITSELF PROFESSING TO HAVE MORE MODERATE VIEWS
ON MANY ISSUES, HAS BEEN UNWILLING OR UNABLE TO EXTRACT
CONCESSIONS FROM THE GROUP OF 77 AND HAS ACCORDINGLY
REPEATEDLY PRESSED GROUP B AND PARTICULARLY USG
TO KEEP GIVING MORE; THAT IF FACT USG AND OTHER
MEMBERS OF GROUP B HAVE MADE VERY SUBSTANTIAL CON-
CESSION TO GROUP OF 77 WHICH LATTER HAS LARGERLY BEEN
UNWILLING TO MATCH; THAT MEXICAN CHAIRMANSHIP AND
TACTICAL DIRECTION OF UNCTAD WORKING GROUP HAS BEEN
PARTISAN, PREJUDICED IN FAVOR OF GROUP OF 77 POSITIONS,
AND INCOMPETENT; THAT MEXICAN CHAIRMAN OF WORKING GROUP
HAS SPECIALIZED IN KILLING OFF PROMISING COMPROMISES,
TO ASTONISHMENT OF GROUP B, AND OTHERWISE HAS LONG

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ACTED AS IF HE WERE RESIGNED TO CONFRONTATION RATHER

THAN SEEKING COMPROMISE; THAT MEXICO HAS BLITHELY BREACHED MAW-RABASA AGREEMENT AND PUBLICLY SUBVERTED ITS ASSURANCES TO USG THAT IT WOULD PROMOTE IT. IT MAY ALSO BE ASSUMED THAT, IN PRESSING USG TO SUPPORT THE CHARTER REGARDLESS OF USG INTERESTS, MEXICO WILL NOT MENTION FACT THAT, IF IT DOES, IN A FEW YEARS, WHEN THE CHARTER IS UP FOR THE PERIODIC REVIEW MAXICO INSISTS UPON, MEXICO WILL THEN PRESS USG TO VOTE FOR STILL MORE RADICAL AND STILL MORE IMPROBABLE PRINCIPLES TO GOVERN INTERNATIONAL ECONOMIC RELATIONS, CITING THE PRECEDENT OF USG HAVING SUPPORTED INITIAL VERSION OF THE CHARTER.

8. WHILE FRENCH, FRG AND JAPANESE DELEGATIONS TO CONTACT GROUP HAVE TAKEN A HARDER LINE ON SUB-STANTIVE ISSUES THAN USG, AS REPORTED REFTEL, IT IS BY NO MEANS CLEAR HOW THEY INTEND TO VOTE ON CHARTER. THAT QUESTION WILL NOT BE DECIDED AT OECD CONSULTATIONS, NOR OF COURSE NEED USG NOW RESOLVE IT. HOWEVER, IN VIEW USDEL, USG INTERESTS WILL BE MATERIALLY PREJUDICED BY ANY INDICATION OF USREP AT OECD CONSULTATIONS THAT USG WILL NOT VOTE AGAINST AN UNSATISFACTORY CHARTER, FOR THAT WILL INVITE EC AND JAPAN TO RUN FOR COVER.

9. WE RATHER SUGGEST THAT USREP TAKE FOLLOWING POSITION:
(A) WE WILL MAKE MAXIMUM EFFORT TO REACH AGREEMENT ON A SATISFACTORY CHARTER AT IMPENDING ROUND OF INFORMAL CONSULTATIONS. TO DO SO, HOWEVER, WE WILL NOT MAKE MATERIAL CONCESSIONS BEYOND LIMITS OF BRILLANTES DRAFT, WILL REQUIRE AN APPROPRIATE REFERENCE TO "INTERNATIONAL OBLIGATIONS" AND WILL MAINTAIN OUR POSITIONS ON DELETING SUBJECTS LIKE INDEXATION, ETC.

(B) IF THAT EFFORT FAILS, WE WILL SUPPORT A RESOLUTION FOR A FIFTH SESSION OF THE WORKING GROUP.

(C) IF NEVERTHELESS MEXICO AND GROUP OF 77 PRESS AN UNSATISFACTORY CHARTER TO A VOTE, WE SHALL VOTE AS OUR SUBSTANTIVE INTERESTS REQUIRE. WHILE QUESTION OF PRECISELY HOW WE SHALL VOTE WILL BE DECIDED THEN, WE DEFINITELY DO NOT EXCLUDE VOTING NEGATIVELY, AND LIMITED OFFICIAL USE

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WE SHALL WISH TO CONSULT FULLY WITHIN OECD WITH A VIEW TO MAINTAINING THE UNITY WHICH FOR MOST PART HAS BEEN SUCESSFULLY MAINTAINED BY IT ON THE CHARTER.
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Message Attributes

Automatic Decaptoning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: ECONOMIC DEVELOPMENT, ECONOMIC COOPERATION, LESS DEVELOPED COUNTRIES, MEETINGS
Control Number: n/a
Copy: SINGLE
Draft Date: 09 SEP 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: kelleyw0
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974GENEVA05670
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D740250-0265
From: GENEVA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19740964/aaaaccid.tel
Line Count: 327
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EB
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 6
Previous Channel Indicators:
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: GENEVA 4654
Review Action: RELEASED, APPROVED
Review Authority: kelleyw0
Review Comment: n/a
Review Content Flags:
Review Date: 25 APR 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <25 APR 2002 by rowelle0>; APPROVED <10 MAR 2003 by kelleyw0>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: UNCTAD TDB XIV: OECD CONSULTATIONS ON CHARTER OF ECONOMIC RIGHTS AND DUTIES
TAGS: EGEN, UNCTAD, OECD
To: STATE
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005